

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

WEST CENTRAL CONCRETE, LLC

APPELLANT,

v.

**JIM REEVES D/B/A REEVES & SONS CONSTRUCTION,
AARON MCCLURE & TRICIA MCCLURE, ROBERT L.
COX, TRUSTEE AND HAWTHORN BANK**

RESPONDENTS.

DOCKET NUMBER WD71462

DATE: June 1, 2010

Appeal From:

Henry County Circuit Court
The Honorable Wayne P. Strothmann, Judge

Appellate Judges:

Division One: Karen King Mitchell, Presiding Judge, Lisa White Hardwick and Cynthia L. Martin, Judges

Attorneys:

R. Scott Gardner, Sedalia, MO, for appellant.

Jim Reeves, Respondent Pro Se, J. Eric Mitchell, Clinton, MO for respondents McClures and Robert L. Cox, Clinton, MO, for respondents Hawthorn and Cox.

MISSOURI APPELLATE COURT OPINION SUMMARY

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Henry County

Before Division One Judges: Karen King Mitchell, Presiding Judge, Lisa White Hardwick and Cynthia L. Martin, Judges

West Central Concrete, LLC appeals from the trial court's judgment dismissing its mechanic's lien enforcement action for failure to diligently prosecute. West Central contends that the trial court abused its discretion in dismissing the action because the factual findings in the trial court's judgment were contrary to the facts reflected on the trial court's docket sheet. West Central also maintains that the trial court failed to include a finding in its judgment that the delay in serving one of the defendants, Jim Reeves d/b/a Reeves & Sons Construction, was "unnecessary," as required by section 429.170.

AFFIRMED.

Division One holds:

Despite West Central's claims that the findings in the trial court's judgment are inconsistent with the docket sheet, a review of the record reveals that there are no material differences which would afford West Central relief.

Section 429.170 requires an action to enforce a mechanic's lien "shall be commenced within six months after filing the lien, and prosecuted without unnecessary delay." As long as the record supports a finding of "unnecessary delay" in prosecution, it is immaterial whether the judgment includes an express finding that delay was "unnecessary." There is no meaningful difference between a trial court's exercise of its inherent power to dismiss a case for failure to diligently prosecute and its statutory authority to dismiss a mechanic's lien enforcement action for "unnecessary delay" in prosecution.

Opinion by: Cynthia L. Martin, Judge

June 1, 2010

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